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DANA C. NICKLES
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EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 08-24
September 26, 2008

RE: Can employees of the Kentucky Department of Parks perform duties and requested tasks for the Kentucky State Park Foundation on state time and utilizing state resources?

DECISION: Yes, unless utilization of employee's time and state resources becomes abusive or interferes with the employee's regular duties.

This opinion is issued in response to your August 18, 2008, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the September, 26, 2008, meeting of the Commission and the following opinion is issued.

The Kentucky State Park Foundation is a private, 501(c)(3) non-profit organization whose mission is to advocate for the Kentucky State Parks and Historic Sites and to connect people to the natural, historical and cultural resources of the Kentucky State Park system.

The Foundation has requested that employees of the Kentucky Department of Parks perform certain duties for it including, but not limited to, brochure design, recording meeting minutes, mailings and postage and other secretarial type functions. It appears that the Foundation is requesting that state employees perform these services on a continuing basis instead of requesting occasional assistance with Foundation tasks. The Foundation does not employ individuals to perform these tasks, although under its bylaws it could employ individuals for such a purpose. When state employees are used, the Foundation does not compensate the employees or the agency in any way for their performance of these functions. The Commissioner of the Department of Parks, who serves on the Foundation Board as an ex-officio member, is responsible for directing or approving the employees to perform such tasks for the Foundation.

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In numerous advisory opinions, the Commission has dealt with the proper use of state time and resources. In Advisory Opinion 98-15 we held that it was a management decision whether to allow state employees to use state time and resources to give a baby shower for a co-worker. We cautioned management and the employees in that opinion not to misuse state time or equipment, since misuse could constitute a violation of KRS 11A.020(1)(d). In Advisory Opinion 98-6 we found that the proper use of electronic mail was an agency management decision, and in Advisory Opinion 03-30 we found that agency management should be responsible for determining whether service by an employee on a state Board constitutes a proper use of an employee's time.

Those opinions hold for the most part that the decisions regarding proper use of state time and resources should be left to management's discretion provided state time and equipment are not misused. We believe that to be the appropriate result in this case because part of the Kentucky State Park Foundation's mission ultimately benefits the Kentucky State Park system. Thus, agency management should decide the proper use of state time by an employee and the limit to which state resources may be committed to Foundation purposes. Conversely, should the requirements of the Foundation be such that an employee hired to perform tasks for the agency is unable to complete his or her regular job duties, or should use of state employees and state resources become continuous and ongoing, it is management's responsibility to insure that limits are observed and abuses do not occur.

The Commission's decision herein is limited to the facts presented and premised upon the fact that this case involves a non-profit entity, the mission of which benefits the agency. The Commission's jurisdiction extends only to the implications of the conduct presented under KRS Chapter 11A. This decision should not be interpreted as addressing any implications of the conduct presented under KRS Chapter 18A.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION



By Chair: Gwen R. Pinson

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COMMONWEALTH OF KENTUCKY
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DONNA GREENWELL DUTTON
GENERAL COUNSEL

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 98-6
February 26, 1998

RE: May electronic mail be used to respond to questions from school children and teachers?

DECISION: Only if agency management determines that such use of electronic mail is a proper use of state resources.

This opinion is in response to your December 4 and December 23, 1997, communication to the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the February 26, 1998, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You receive electronic mail ("e-mail") from school children and teachers, some who inquire as to your job responsibilities and others who want to be electronic pen-pals. In addition, you have received a type of a chain letter through e-mail from a state employee. You ask whether it is an appropriate use of state equipment and/or resources to respond to either of these communications.

The Commission believes that the proper use of e-mail by public servants is an agency management decision and should be addressed through in-house agency policy. However, if a public servant uses the e-mail to create an advantage for himself, he may be in violation of KRS 11A.020(1)(d) which provides:

- (1) No public servant, by himself or through others, shall knowingly:
....
- (d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.



EXECUTIVE BRANCH ETHICS COMMISSION

Advisory Opinion 98-6

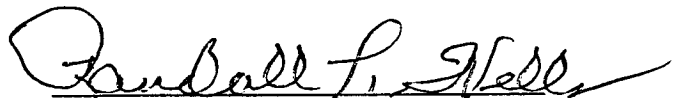
February 26, 1998

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Although the Commission does not believe that the proper use of e-mail by public servants is a matter under its jurisdiction, it does encourage employees not to misuse state time or equipment for their personal use.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION


BY: Randall L. Wells, Chair

ADVISORY OPINION 98-15

April 8, 1998

RE: May employees use state time and equipment to host baby shower?

DECISION: Decision should be left to the discretion of management, provided state time and equipment are not misused.

This opinion is in response to your February 23, 1998, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the April 8, 1998, meeting of the Commission, and the following opinion is issued.

You ask the following:

Do state agency employees (taxpayer paid) have the right to:

- 1) Compose baby shower invitations on state-owned computers and state time, use the state-owned copy machines and state time to make enough copies for all employees (about 75), and use state-owned colored paper for the copies?*
- 2) Use state time (taxpayer funded) to hold baby showers for employees (not lunch or coffee breaks – actual paid work hours; 1 hour x 75 employees x hourly wage = BIG taxpayer dollars)?*
- 3) Should state employees use leave time if they conduct or attend a baby shower for a co-worker during taxpayer-paid work hours?*

In Advisory Opinion 98-6 (a copy of which is enclosed), the Commission stated that the proper use of electronic mail is an agency management decision and should be addressed through in-house agency policy. Similarly, the Commission believes that the proper use of state time and equipment for an employee's baby shower is an agency management decision.

The Commission takes note that the Commonwealth of Kentucky Employee Handbook provides:

When state materials and equipment are put to personal use, they must be replaced sooner, causing a drain on agency funds. Honest, ethical employees, nevertheless, often use state copy machines, stationery, pens and pencils, typewriters, and other state property as if they were their own private property, never considering that the combined cost of all employees' using state material and equipment for their personal use may be millions of dollars yearly.

...

The conscientious employee will take care to make distinctions between what materials are for state work and what is considered personal property.

Although the Commission believes that the proper use of state time and equipment is an agency management decision not under the jurisdiction of the Commission, the Commission cautions management and employees not to misuse state time or equipment. Excessive misuse of state time and equipment may result in a violation of KRS 11A.020(1)(d) provided below:

(1) No public servant, by himself or through others, shall knowingly:

...

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

Enclosure: AO 98-6

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 03-30

July 31, 2003

RE: Must employee use personal leave time for service on Board of Regents?

DECISION: Decision should be left to the discretion of management, provided it is within Personnel Cabinet policies.

This opinion is issued in response to your July 29, 2003, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the July 31, 2003, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are employed as a branch manger for the Kentucky Revenue Cabinet (the "Cabinet"). On May 20, 2003, Governor Paul Patton appointed you to serve on the Kentucky State University Board of Regents (the "Board"). You were sworn in on July 24, 2003, and attended your first Board meeting and committee meeting on July 25, 2003.

You have questions regarding the use of leave time for attendance at such meetings. The Personnel Cabinet has advised you that an employee of the Department of Parks was advised that he did not have to use personal leave time for any time spent on matters for the Board. It is your understanding that such service is considered "authorized office time." You communicated this information to officials at your Cabinet who have requested that you obtain an opinion from the Commission on this matter.

In Advisory Opinion 94-60 (a copy of which is enclosed), the Commission stated that an executive branch employee serving on the Commission on Women should use annual or compensatory time for any normal work hours spent on Commission on Women business.

However, in Advisory Opinion 98-15 (a copy of which is enclosed), the Commission stated that it believed that the proper use of state time by employees is an agency management decision not under the jurisdiction of the Commission. Accordingly, the Commission attempts to clarify its opinion.

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ADVISORY OPINION 03-30

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The Commission believes that agency management should decide what is proper use of state time by an employee, including whether service on a state board or commission is a proper use. Thus, Cabinet management, not the Commission, should decide whether the employee's service on the Board is a proper use of the employee's state time, and thereby whether it should be considered part of the employee's official duty. If Cabinet management believes that time spent on Board matters is a proper use of state resources and consequently a part of the employee's official duty, the Executive Branch Code of Ethics would not prohibit the use of leave time for such service on the Board, if such use of leave time is within Personnel guidelines.

The Commission points out, however, that if your service for the Board is considered by management as part of your official duty, and therefore you do not use leave time for such activity, you are prohibited from accepting additional compensation (from the Board) for such service, pursuant to KRS 11A.040(5) provided below:

(5) A public servant shall not knowingly accept compensation, other than that provided by law for public servants, for performance of his official duties without the prior approval of the commission.

Additionally, the Commission still believes that you should use personal leave time for service on the Board if Cabinet management does not believe that such service is part of your official duty for the Cabinet.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Joseph B. Helm, Jr.

Enclosures: Advisory Opinion 94-60
Advisory Opinion 98-15